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Precedent of the TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

*In re Delta Faucet Company*

Serial No. 88411380

Edgar A. Zarins, Esq. Masco Corporation  
for Delta Faucet Company.

Joseph P. McCarthy, Trademark Examining Attorney, Law Office 127,  
Mark Pilaro, Managing Attorney.

Before Kuhlke, Goodman and Larkin,  
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

Delta Faucet Company (“Applicant”) seeks registration on the Principal Register  
of the mark LAMPARD (in standard characters) for

plumbing products, namely, faucets, showerheads and  
toilets; lighting products, namely, lighting fixtures in  
International Class 11.<sup>1</sup>

<sup>1</sup> Application Serial No. 88411380 was filed on May 1, 2019, based upon applicant’s assertion of a *bona fide* intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

Page references to the application record refer to the online database of the USPTO’s Trademark Status & Document Retrieval (TSDR) system. References to the briefs on appeal refer to the Board’s TTABVUE docket system.

The Trademark Examining Attorney has refused registration of Applicant's mark under Trademark Act Section 2(e)(4), 15 U.S.C. §1052(e)(4) on the ground that LAMPARD is primarily merely a surname.

After the Trademark Examining Attorney made the refusal final, Applicant appealed to this Board. We affirm the refusal to register.

I. Section 2(e)(4) Refusal

Section 2(e)(4) of the Trademark Act precludes registration of a mark on the Principal Register which is "primarily merely a surname," without a showing of acquired distinctiveness under Section 2(f) of the Act, 15 U.S.C. § 1052(f). A term is primarily merely a surname if, when viewed in relation to the goods or services for which registration is sought, its primary significance to the purchasing public is that of a surname. *See Earnhardt v. Kerry Earnhardt, Inc.*, 846 F.3d 1374, 123 USPQ2d 1411, 1413 (Fed. Cir. 2017); *In re Beds & Bars Ltd.*, 122 USPQ2d 1546, 1548 (TTAB 2017).

Whether the primary significance of an applied-for term is merely that of a surname is a question of fact. *See In re Etablissements Darty et Fils*, 759 F.2d 15, 225 USPQ 652, 653-54 (Fed. Cir. 1985). There is no rule as to the kind or amount of evidence necessary to show that a term would be perceived as primarily merely a surname. This question must be resolved on a case-by-case basis. *Id.* at 654; *see also, e.g., In re Pohang Iron & Steel Co.*, 230 USPQ 79, 79 (TTAB 1986). The entire record is examined to determine the primary significance of a term. If there is any doubt, we

“are inclined to resolve such doubts in favor of applicant.” *In re Benthin Mgmt. GmbH*, 37 USPQ2d 1332, 1334 (TTAB 1995).

When we are faced with a Section 2(e)(4) refusal of a term in standard character form, with no other literal or design elements, we consider the impact the applied-for term has or would have on the purchasing public because “it is that impact or impression which should be evaluated in determining whether or not the primary significance of a word when applied to a product is a surname significance. If it is, *and it is only that*, then it is primarily merely a surname.” *In re Harris-Intertype Corp.*, 518 F.2d 629, 186 USPQ 238, 239 (CCPA 1975) (quoting *Ex parte Rivera Watch Corp.*, 106 USPQ 145, 149 (Comm’r Pat. 1955)) (emphasis in original).

To determine whether the purchasing public would perceive the term LAMPARD as primarily merely a surname, we consider several inquiries including: (1) whether anyone connected with Applicant has this surname; (2) whether the term has a non-surname “ordinary language” meaning; and (3) the extent to which the term is used by others and encountered as a surname. *In re Etablissements Darty et Fils*, 759 F.2d 15, 225 USPQ 652, 653 (Fed. Cir. 1985); *In re tapio GmbH*, 2020 USPQ2d 11387, at \*8-9 (TTAB 2020). In addition to the list of examples of inquiries articulated in *Darty*, the Board articulated two additional examples of inquiry in *In re Benthin*, 37 USPQ2d at 1333-34, (4) whether the term has the “structure and pronunciation” of a surname; and (5) whether the stylization of lettering is distinctive enough to cause the mark not to be perceived as primarily merely a surname. These inquiries are not exclusive and any of these circumstances—singly or in combination—and any other relevant

circumstances, may shape the analysis in a particular case. *In re Eximius Coffee, LLC*, 120 USPQ2d 1276, 1278 (TTAB 2016); *see also In re Integrated Embedded*, 120 USPQ2d 1504, 1506 n.4 (TTAB 2016).

In this case, Applicant and the Examining Attorney have presented evidence and/or arguments regarding the above-listed inquiries, but both acknowledge that the stylization is not applicable because the mark is in standard characters. Applicant's brief, 4 TTABVUE 5; Examining Attorney's brief, 6 TTABVUE 9. *See Integrated Embedded*, 120 USPQ2d at 1506 n.4; *In re Yeley*, 85 USPQ2d 1150, 1151 (TTAB 2007). We review the four remaining inquiries, but in making our determination we weigh them together and accord the appropriate weight to each one based on the evidence of record.

A. The Extent to Which LAMPARD is Encountered as a Surname

The Examining Attorney submitted news articles and database evidence to support the argument that the public is exposed to LAMPARD as a surname. The Examining Attorney relies on three news articles (bleacher report, espn.com and the Guardian (a U.K. publication)), about Frank Lampard who is the head coach of the Chelsea (U.K.) football club in the English Premier League, and a former professional athlete who was a top scoring mid-fielder when he played soccer in the U.K. Examining Attorney's brief, 6 TTABVUE 5-6; January 22, 2020 Final Office Action, at TSDR 5-22. June 24, 2019 Office Action at TSDR 27. The record also includes Frank Lampard's Wikipedia page and Frank Lampard's player information and

statistics on the Major League Soccer website.<sup>2</sup> June 24, 2019 Office Action at TSDR 23-27. The Examining Attorney also points to the Lexis/Nexis public records surname database that reflects 237 individuals with the name LAMPARD as support that the surname “is not particularly rare.” Examining Attorney’s brief, 6 TTABVUE 6; June 24, 2019 Office Action at TSDR 2. Additional whitepages database evidence submitted by the Examining Attorney shows 374 individuals with the surname LAMPARD. June 24, 2019 Office Action at TSDR 3-8.

Applicant responded to this evidence by arguing that the database evidence of “approximately 300 individuals” with the surname LAMPARD establishes exactly the opposite, namely that LAMPARD is “an extremely rare surname.” Applicant’s brief, 4 TTABVUE 2.

Based on the evidence, we find LAMPARD is somewhat rarely used and encountered as a surname. Both the Lexis/Nexis database (237) and whitepages listings (374) are not a significant number. *See e.g., In re Eximius Coffee*, 120 USPQ2d at 1280 (ALDECOA rarely encountered as a surname; census shows 233 people in the United States with the name); *In re Joint-Stock Co. Baik*, 84 USPQ2d 1921, 1922-23 (TTAB 2007) (BAIK is “an extremely rare surname”; superpages database shows 456 people with the name BAIK).

In addition, the record does not support widespread exposure to the public in the United States of the surname LAMPARD through the media as there is very little

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<sup>2</sup> Frank Lampard played in the United States in 2015-2016 for the New York team in Major League Soccer. June 24, 2019 Office Action at TSDR 23-27.

evidence of media attention to or publicity of persons having that surname. Although the Examining Attorney argues that current coach and former soccer player Frank Lampard, who lives in the United Kingdom but played in the United States in 2015-2016, has “fame and notoriety,” 6 TTABVUE 6, there is not a sufficient showing that Frank Lampard is a widely recognized public personality in the United States. We find this evidence is not sufficient to show widespread and routine exposure of the surname LAMPARD to the United States public. *Cf. In re Eximius Coffee*, 120 USPQ2d at 1280-81 (excerpts from various regional newspapers such as the Washington Post and Detroit Free Press, in which individuals with the surname ALDECOA were mentioned in relation to sports scores, local events, and their jobs, “are the type of evidence that can be probative and aid analysis because they show public exposure to ALDECOA used as a surname.”); *In re Gregory*, 70 USPQ2d 1792, 1795 (TTAB 2004) (“A surname rarely appearing in birth records may nonetheless appear more routinely in news reports, articles and the like, so as to be broadly exposed to the general public.”).

Although we find that LAMPARD is rarely used as a surname, this does not end the inquiry because Section 2(e)(4) “makes no distinction between rare and commonplace surnames.” *See In re Picone*, 221 USPQ 93, 95 (TTAB 1984). Even an uncommon surname is unregistrable if its primary significance to purchasers is as a surname. *See In re Giger*, 78 USPQ2d 1405, 1408 (TTAB 2006) (“[T]he fact that a term is not a common surname does not mean that a surname would not be considered to be primarily merely a surname.”).

B. Whether LAMPARD is the Surname of Anyone Connected with Applicant

There is no evidence to indicate that anyone connected with Applicant has the surname LAMPARD, and Applicant states “that no one connected with the Applicant has the surname LAMPARD or any literal equivalents.” Applicant’s brief, 4 TTABVUE 4.

The fact that no one associated with the Applicant has the surname LAMPARD does not tend to establish one way or the other whether the term would be perceived as a surname. This inquiry is neutral. *In re Thermo LabSystems Inc.*, 85 USPQ2d 1285, 1287 (TTAB 2007); *In re Gregory*, 70 USPQ2d at 1795.

C. Whether LAMPARD Has Any Recognized Meaning Other Than As a Surname

To establish that LAMPARD does not have any ordinary language meaning or geographic meaning, the Examining Attorney relies on negative dictionary and gazetteer evidence. The search results for the term LAMPARD from the American Heritage Dictionary, Merriam-Webster Dictionary, and The Columbia Gazetteer of the World yielded no results. June 24, 2019 Office Action at TSDR 9-14.

Applicant argues that because LAMPARD is a rare surname, the lack of dictionary evidence does not support the refusal. However, the fact that LAMPARD “may be a rare surname does not entitle it to treatment different from what would be accorded to a common surname when no other meaning for the word is shown.” *In re E. Martinoni Co.*, 189 USPQ 589, 590-91 (TTAB 1975).

We find that the evidence that LAMPARD has no other recognized meaning further supports the Examining Attorney's position that the primary significance of LAMPARD is as a surname.

D. Whether Evidence Shows that LAMPARD has the Structure and Pronunciation of a Surname

Applicant argues LAMPARD does not have the structure and pronunciation of a surname, while the Examining Attorney argues that the "public would perceive the structure and sound of the 'LAMPARD' surname similarly to that of the surname 'LAMBERT.'" Applicant's brief, 4 TTABVUE 5; Examining Attorney's brief, 6 TTABVUE 8.

The Examining Attorney relies on evidence from the "House of Names" and surnamedb websites that both indicate LAMPARD is a surname, derived from the Old French and Old Germanic personal names LAMBERT and LANBERT, with variant spellings of the surname that include LAMBERT, LAMBARD, LAMBART, LAMBARTH, LAMPART and LAMPERD. June 24, 2019 Office Action at TSDR 15-19.

We find that that LAMPARD would be perceived as a surname as it has a similar structure and pronunciation to related surnames. *See In re Industrie Pirelli*, 9 USPQ2d 1564, 1566 (TTAB 1988) (primary significance of PIRELLI is a surname, finding that it was similar in structure to some of the common Italian surnames found in the American Surnames reference book such as Antonelli, Mancinelli, and Pacelli). Applicant submitted no evidence to show that that LAMPARD would be perceived by the public as a fanciful term.



Overall, the record contains evidence showing that LAMPARD is an actual surname and that no other meaning exists. This evidence is corroborated by evidence that LAMPARD is similar in structure and pronunciation to other related surnames. Applicant's unsupported argument that consumers would not perceive the term as a surname due to its rarity is unconvincing. On this record, the primary significance of LAMPARD to the purchasing public is that of a surname.

**Decision:** The Section 2(e) (4) refusal to register Applicant's mark LAMPARD is affirmed.